IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 616 OF 2003

IN

SUMMARY SUIT NO. 1636 OF 2003

Sahyadri Tooks Marketing P.Ltd. .. Plaintiff

versus

M/s.Adnan Textiles & ors. .. Defendant

...

Mr.Ramesh Jain for the plaintiff.

Mr.S.I. Menon for the defendants.

CORAM : D.G. KARNIK,J.

DATED : 30th March 2005.

P.C.:

1. Heard the learned counsel appearing for the parties.

2. This Summons for Judgement is taken out by the plaintiff for recovery of the amount of the loan

secured by bills of exchanges.

3. I have heard the learned counsel for the parties and also perused the affidavit in support and affidavit in reply. Affidavit in reply has been filed by defendant no.4 in the capacity as Constituted Attorney of the defendant no.2 and Constituted Attorney of the defendant no.1 firm. No affidavit in reply has been filed by the defendant no.3 who is also a partner of defendant no.1.

4. The plaintiff lent and advanced to the defendant no.1 a loan of Rs.50,000/- by cheque on 1st October 1996. The plaintiff further lent and advanced to the defendant a further sum of Rs.50,000/- by cheque on 8th July 1998. Towards the repayment of the said loan, the defendant no.1 issued two cheques, copies of which are filed at Exhibit-A and B to the plaint. The cheques were not presented at the request of the defendants. The defendant no.1 thereafter drew two bills of exchanges dated 8th August 2001 for Rs.50,000/- each. Bills were signed defendant no.2 as a partner of defendant no.1 and acceptance was signed by defendant no.4.

5. By filing an affidavit in reply, the defendant nos.1, 2 and 4 have contested the plaintiff's claim. The defendants have stated that the two cheques, copies of which are at Exhibit-A and B do not bear the signature of the defendants. Hence for the purpose of considering the case of the plaintiff, the said two cheques are not taken into consideration.

6. The defendants have not denied their signature on the two bills of exchanges Exhibit-C and D. In paragraph no.10 of the affidavit in reply, the defendant no.4 has stated: "I said that it is true that on 1.10.06, the plaintiff gave an amount of Rs.50,000/- to the defendant no.1 by cheque." Thereafter in paragraph no.11 of the affidavit in reply, the defendant no.4 has further stated: "I state that it is true that on 8th July 1998 the plaintiffs have a further amount of Rs.50,000/- to the defendant no.1 firm by cheque". Thus, the defendants have not only admitted signatures on the bills of exchange but have also admitted the original consideration and receipt of loan of Rs.1 lakh. Learned counsel for the defendants submit that the bills of exchanges were signed by the defendants in black and have been misused. Since the signatures on

the bills of exchanges are admitted u/s.20 of the Negotiable Instruments Act, the holder would have an authority to fill in the blanks in the instruments. As the consideration has been admitted and there is no case that an amount in excess of amount of the original loan is inserted in the bills it cannot be stated that the plaintiff has exceeeded the authority conferred on it u/s.20 of the Negotiable Instruments Act.

7. The learned counsel for the defendants then submits that the amount of the loan has been repaid in cash. No proof of repayment has been produced. No receipt of repayment nor even an extract of the books of accounts reflecting the repayment is filed. In my view, the defence of repayment of the loan in cash is a sham defence raised merely for the purpose of delaying the passing of a decree.

8. For these reasons, Summons for Judgement is made absolute and the suit of the plaintiff is decreed in terms of prayer clause of the suit with the modification that the interest form the date of the suit till payment would be payable at 9% p.a.

D.G. KARNIK,J